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Gregory Ashton

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

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MAIL DATE

DELIVERY MODE

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY ASHTON, CRAIG ANDREW HAWKINS,
FREDERICK MICHAEL LANGDON, EIRO FUKUDA
and FUMITO FURUKAWA

Appeal 2009-006703
Application 09/700,561
Technology Center 3700

Decided: June 25, 2010

Before JOHN C. KERINS, MICHAEL W. O'NEILL, and FRED A.
SILVERBERG, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Gregory Ashton et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 4, 5 and 7-10, the only claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

Appellants' claimed invention is to a particular construction of a disposable garment. Independent claim 1 reads, in pertinent part, as follows:

1. A disposable garment . . . comprising . . . a chassis . . . having . . . an ear panel having a waist edge and a leg opening edge, wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width . . .

THE REJECTION

The Examiner has rejected claims 1, 4, 5 and 7-10 under 35 U.S.C. § 102(b) as being anticipated by Buell (US 5,569,234, issued October 29, 1996).

ISSUE

Did the Examiner err in finding that Buell discloses a disposable garment on which an ear panel has a leg opening edge having a lateral width that is greater than a lateral width of the waist edge of the ear panel?

ANALYSIS

The USPTO is charged with ascribing to claims their broadest reasonable construction that is consistent with the specification. *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990). Here, the Examiner contends that, “the claims require a first and a second lateral width *within* corresponding regions,” and that “the claimed width may be considered as any width *within* the designated regions.” (Answer 6)(emphasis in italics added). Employing these contentions as guideposts, the Examiner provides an annotated version of Figure 1A of Buell, intended to illustrate how Buell meets the claim limitations directed to the first and second lateral widths of the ear panel. (Answer 7).

The Examiner found that elements 64 and 64' of Buell disclose the claimed ear panel. (Answer 3). In the annotated version of Figure 1, the Examiner identifies a first lateral width by a dimension line extending across a portion of the ear panel, and a second lateral width of a greater dimension by a dimension line extending across the entire ear panel. This annotated drawing figure manifests that the Examiner’s interpretation of the claim limitations is unreasonably broad and inconsistent with Appellants’ Specification. Claim 1 does not, as asserted by the Examiner, call for arbitrarily selected lateral widths “within” the ear panel; it calls for the ear panel to *have* a first lateral width at its waist edge, and to *have* a second lateral width at its leg opening edge. This language evinces that the claim is defining the lateral width *of the ear panel* at two specified locations, and not, as contended by the Examiner, a lateral “width” of some portion of, or within, the ear panel.

The Examiner's claim interpretation and findings corresponding thereto do not establish that the Buell patent anticipates claim 1 and claims 4, 5 and 7-10 depending from claim 1.

CONCLUSION

The Examiner employed an unreasonably broad interpretation of claim 1 in finding that the claim is anticipated by Buell. The rejection of claim 1 and claims 4, 5 and 7-10 depending therefrom under 35 U.S.C. § 102(b) over Buell will not be sustained.

DECISION

The decision of the Examiner to reject claims 1, 4, 5 and 7-10 under 35 U.S.C. § 102(b) is reversed.

REVERSED

mls

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